

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Madeleine Matz	Team: Squad #12	CCRB Case #: 202208707	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Monday, 12/12/2022 10:50 AM	Location of Incident: § 87(2)(b) in Brooklyn	18 Mo. SOL 6/12/2024	Precinct: 75
Date/Time CV Reported Mon, 12/12/2022 11:31 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 12/21/2022 11:16 AM

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Jerson Guamangarcia	17690	967909	PSA 2
2. PO Jose Fuentes	15643	957602	PSA 2

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Wilson Gonzalez	04558	944604	PSA 2
2. PO Oscar Gonzalezbatista	05938	961794	PSA 2

Officer(s)	Allegation	Investigator Recommendation
A . PO Jose Fuentes	Abuse: Police Officer Jose Fuentes entered § 87(2)(b)	
B . PO Jerson Guamangarcia	Abuse: Police Officer Jerson Guamangarcia entered § 87(2)(b)	
C . PO Jose Fuentes	Abuse: Police Officer Jose Fuentes searched § 87(2)(b)	
D . PO Jerson Guamangarcia	Abuse: Police Officer Jerson Guamangarcia searched § 87(2)(b)	
E . PO Jose Fuentes	Force: Police Officer Jose Fuentes used physical force against § 87(2)(b)	
F . PO Jose Fuentes	Abuse: Police Officer Jose Fuentes threatened to arrest § 87(2)(b)	
G . PO Jose Fuentes	Discourtesy: Police Officer Jose Fuentes spoke discourteously to § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint with the Internal Affairs Bureau via telephone on December 12, 2022 (BR 01). This complaint was referred to the CCRB on December 21, 2022.

At approximately 10:50 AM on December 12, 2022, PO Jerson Guaman-Garcia and PO Jose Fuentes of PSA 2 went to § 87(2)(b) in Brooklyn to conduct a domestic violence home visit for § 87(2)(b) his girlfriend § 87(2)(b) and § 87(2)(b) children, § 87(2)(b) (17 years old at the time of this incident) and § 87(2)(b) (15 years old at the time of this incident) were in the apartment at the time. There was an active order of protection naming § 87(2)(b) as perpetrator and § 87(2)(b) as victim, barring § 87(2)(b) from visiting this location. PO Fuentes and PO Guaman-Garcia entered and searched § 87(2)(b) in order to arrest § 87(2)(b) (**Allegations A through D: Abuse of Authority**, § 87(2)(g)). PO Fuentes and PO Guaman-Garcia found § 87(2)(b) in a bedroom in the apartment. PO Fuentes allegedly pushed § 87(2)(b) while handcuffing her (**Allegation E: Force**, § 87(2)(g)). PO Fuentes told § 87(2)(b) that if she did not back away from him, she would be arrested (**Allegation F: Abuse of Authority**, § 87(2)(g)). In response to § 87(2)(b) stating that PO Fuentes was “messing with a family,” PO Fuentes said, “This isn’t a family,” three times (**Allegation G: Discourtesy**, § 87(2)(g)). § 87(2)(b) was arrested for violating the order of protection naming her as a perpetrator (BR 02).

The investigation obtained body-worn camera (BWC) videos recorded by PO Fuentes, PO Guaman-Garcia, PO Oscar Gonzalez-Batista, and Sgt. Wilson Gonzalez, all of PSA 2 (BR 03). The videos are summarized in IA #85 (BR 04). The investigation also obtained surveillance video from NYCHA, showing the lobby and entrance of 1209 Loring Avenue (BR 05), summarized in IA #34 (BR 06). § 87(2)(b) provided two short videos related to this incident (BR 07) which are summarized in IA # 33 (BR 08).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Jose Fuentes entered § 87(2)(b) **in Brooklyn.**

Allegation (B) Abuse of Authority: Police Officer Jerson Guaman-Garcia entered § 87(2)(b) **in Brooklyn.**

Allegation (C) Abuse of Authority: Police Officer Jerson Guaman-Garcia searched § 87(2)(b) **in Brooklyn.**

Allegation (D) Abuse of Authority: Police Officer Jose Fuentes searched § 87(2)(b) **in Brooklyn.**

§ 87(2)(b) was interviewed by the CCRB on January 9, 2023 (BR 09). § 87(2)(b) provided a phone statement to the CCRB on February 7, 2023 (BR 10). PO Guaman-Garcia was interviewed by the CCRB on April 4, 2023 (BR 11). PO Fuentes was interviewed by the CCRB on April 5, 2023 (BR 12).

It is undisputed that PO Fuentes and PO Guaman-Garcia entered § 87(2)(b) apartment in order to arrest § 87(2)(b).

§ 87(2)(b) stated that she woke up in her bedroom at approximately 10:00 AM on December 12, 2022 to “police sounds,” such as radio noises. § 87(2)(b) looked into the hallway of the apartment and saw PO Fuentes and PO Guaman-Garcia. § 87(2)(b) recognized PO Fuentes and PO Guaman-Garcia from previous “routine” visits they had made to § 87(2)(b) home. Generally, during

previous visits, PO Guaman-Garcia and PO Fuentes spoke to § 87(2)(b) from the building's hallway and did not enter § 87(2)(b) apartment. However, on this date, PO Guaman-Garcia and PO Fuentes entered the apartment and walked through it until they reached § 87(2)(b) room. PO Guaman-Garcia and PO Fuentes entered § 87(2)(b) room and used their flashlights to look around the room before pulling a blanket off the side of § 87(2)(b) bed, revealing § 87(2)(b) hiding between the bed and the wall.

§ 87(2)(b) stated that PO Fuentes had been to § 87(2)(b) apartment for routine visits prior to this incident and had entered and “walked through” § 87(2)(b) apartment during some of those visits.

The officers BWC videos captured the entire incident. At timestamp 2:13 in PO Fuentes' BWC (BR 13), PO Guaman-Garcia and PO Fuentes approach § 87(2)(b) door. A female voice can be heard yelling something inaudible and then, “I did everything right.” PO Fuentes uses a door knocker to knock loudly on the door. PO Guaman-Garcia whispers, “She's not wanted, but there's an order of protection. Right?” PO Fuentes does not respond. At timestamp 3:10, § 87(2)(b) opens the door. § 87(2)(b) says, “Hello,” and stands in his doorway. Immediately, PO Fuentes steps across the threshold into § 87(2)(b) apartment. At the same time, he extends his right hand toward § 87(2)(b) to shake hands. § 87(2)(b) shakes PO Fuentes' hand. PO Fuentes and § 87(2)(b) then hug, and PO Fuentes asks § 87(2)(b) how he is doing. § 87(2)(b) says that he is working on his food stamps application. PO Fuentes asks § 87(2)(b) who is in his apartment, and § 87(2)(b) says that his “son-in-law” (identified by this investigation as § 87(2)(b) § 87(2)(b) brought him some things from the store and that “they're good.” At timestamp 3:45 PO Fuentes asks if § 87(2)(b) is in the apartment, and § 87(2)(b) says no. PO Fuentes enters § 87(2)(b) bedroom and seems to look around before exiting the bedroom and walking towards a bedroom that § 87(2)(b) has just entered. At timestamp 4:00 PO Fuentes knocks on the door of the bedroom § 87(2)(b) is in. § 87(2)(b) says, “Everything is good man.” PO Fuentes knocks again on the door of the room § 87(2)(b) is in. At timestamp 4:50 PO Fuentes tells § 87(2)(b) that he needs § 87(2)(b) to open the door of the room § 87(2)(b) is in. § 87(2)(b) responds “She's like a daughter to me... [inaudible] ... I'm telling you, I'm good, officers. I tell you I'm good.” At timestamp 6:19 PO Fuentes tells § 87(2)(b) “I know § 87(2)(b) is here.” At timestamp 7:10, § 87(2)(b) tells PO Fuentes to “take a check” in her room. At timestamp 8:08, PO Fuentes and PO Guaman-Garcia enter § 87(2)(b) bedroom. As the officers enter, at timestamp 8:09, § 87(2)(b) calls out to officers, “I told you guys, ain't nobody here, ain't nobody bothering me.” PO Fuentes walks over to the bed and removes a blanket from the side of it, exposing § 87(2)(b) who is lying between the bed and the wall. They subsequently place § 87(2)(b) under arrest for criminal contempt.

PO Fuentes and PO Guaman Garcia stated that they had extensive contact with § 87(2)(b) beginning in 2019 for PO Fuentes and in 2021 for PO Guaman-Garcia. They stated that § 87(2)(b) has an ongoing relationship with § 87(2)(b) and that § 87(2)(b) and her children sometimes stay with § 87(2)(b) in his apartment, though they do not stay there permanently. § 87(2)(b) makes frequent 911 calls requesting the removal of § 87(2)(b) and her children from his apartment, and, according to PO Fuentes, has generated 55 domestic incident reports related to § 87(2)(b) and her children in the years prior to this incident. PO Fuentes and PO Guaman-Garcia both stated that at the time of this incident, they were aware of an active order of protection on behalf of § 87(2)(b) naming § 87(2)(b) as the perpetrator, which they believed was issued after an altercation a few months before this incident, during which § 87(2)(b) allegedly choked § 87(2)(b) PO Fuentes and PO Guaman-Garcia stated that they visited § 87(2)(b) apartment approximately monthly to conduct routine domestic violence home visits, and that generally § 87(2)(b) opened his front door and invited the officers into his apartment by hugging them. PO Fuentes and PO Guaman-Garcia stated that in the past, § 87(2)(b) has on occasion refused to come to his door or told officers to go away and come back later, and that during at least one of those instances the officers could hear § 87(2)(b)

§ 87(2)(b) voice in the background. In those instances, PO Guaman-Garcia and PO Fuentes have not entered § 87(2)(b) apartment.

PO Fuentes and PO Guaman Garcia stated that on the date in question, they visited § 87(2)(b) apartment for a routine domestic violence home visit and heard § 87(2)(b) voice through his apartment door. Both officers stated that they entered § 87(2)(b) apartment to check on § 87(2)(b) safety and to arrest § 87(2)(b). PO Fuentes and PO Guaman-Garcia stated that they did not verbally request § 87(2)(b) permission before entering his apartment. PO Fuentes and PO Guaman Garcia stated that they believed that § 87(2)(b) arm movement to shake PO Fuentes' hand directly after § 87(2)(b) opened his door constituted consent based on their prior interactions with § 87(2)(b) during which he consistently invited them into his home by opening his door and hugging them. Both officers stated that consent is required when entering someone's home during a domestic violence home visit, and that if such consent is not granted then officers cannot enter the apartment unless there is an apparent emergency. Neither officer stated that they believed that such an emergency was occurring during this incident and stated that § 87(2)(b) demeanor seemed normal, and he seemed unharmed.

The ruling in *Payton v. New York*, 445 U.S. 753 (1980) (BR 14) established that, absent exigent circumstances or consent, officers cannot enter a private residence to make a warrantless arrest. This ruling, in part, analyzed the arrest of a man who did not have time to consent or object to officers entering his home to arrest him before they did so, and the *Payton* court found that this entry was unlawful.

People v. Long, 508 N.Y.S.2d 774 (1986) (BR 15) states that officers may enter a residence to make an arrest on the basis of "words, deeds and gestures in admitting" them into such a residence, even absent specific words of consent. The case includes a situation in which an apartment owner spoke to officers in a hallway about a case involving someone in her apartment, confirming the presence of that person in the apartment, and then entering her apartment and leaving her door open so that officers could enter behind her.

BWC videos reveal that PO Fuentes stepped across the threshold of § 87(2)(b) apartment door immediately after § 87(2)(b) opened it. The officers did not ask for consent to enter or wait for § 87(2)(b) to invite them in. They gave no time for § 87(2)(b) to engage in any gesture which might be interpreted as an invitation inside. PO Fuentes and PO Guaman-Garcia stated that § 87(2)(b) movement of his right arm to shake PO Fuentes' hand constituted implied consent based on their prior interactions with § 87(2)(b). However, PO Fuentes' BWC video reveals that he initiated the handshake, and did so after stepping across the threshold. Both officers stated that they had entered § 87(2)(b) apartment numerous times before this incident. However, consent on some earlier date or dates did not constitute an indefinite invitation for officers to enter § 87(2)(b) home. Additionally, both officers also stated that § 87(2)(b) had, on occasion, declined to allow officers to enter his apartment. Once the officers were inside, BWC videos show § 87(2)(b) telling officers multiple times that he "is good," that "everything is good," and that "nobody is bothering me," in response to their questions about § 87(2)(b) presence in his apartment, indicating his reservations about the officers having entered his apartment. § 87(2)(g) PO Fuentes and PO Guaman-Garcia planned to arrest § 87(2)(b) when they entered § 87(2)(b) apartment. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (E) Force: Police Officer Jose Fuentes used physical force against § 87(2)(b)

§ 87(2)(b) stated that after PO Fuentes found § 87(2)(b) next to § 87(2)(b) bed, he “pushed” or “slammed” § 87(2)(b) onto § 87(2)(b) bed and then handcuffed her on the bed.

§ 87(2)(b) stated that PO Fuentes “grabbed” her by her arms when she was next to § 87(2)(b) bed in a “rough” manner. § 87(2)(b) declined to answer further questions about the manner in which officers made physical contact with her.

PO Guaman-Garcia’s BWC video (BR 16) captured the physical interaction between PO Fuentes and § 87(2)(b). Beginning at timestamp 8:22, § 87(2)(b) stands up from where she was hiding behind § 87(2)(b) bed. PO Fuentes holds on to § 87(2)(b) left wrist and puts a handcuff on it. PO Fuentes tells § 87(2)(b) to turn around so that he can finish handcuffing her. PO Fuentes then guides § 87(2)(b) toward the bed with his right hand on § 87(2)(b) right shoulder and his left hand holding onto the handcuff attached to § 87(2)(b) left wrist. At timestamp 8:35 § 87(2)(b) climbs onto the bed in front of her and lowers herself chest-down onto the bed. At timestamp 8:42 PO Fuentes moves § 87(2)(b) right arm behind her back and handcuffs her right wrist. § 87(2)(b) stands up from the bed and PO Fuentes guides her by her left shoulder towards the entrance of the bedroom. The video shows that PO Fuentes did not forcefully push § 87(2)(b) onto the bed. Rather, he guided her down onto the bed as she lowered herself into that position.

§ 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Jose Fuentes threatened to arrest § 87(2)(b)

§ 87(2)(b) stated that PO Fuentes told her that she could be arrested if she “got too close to him.”

At timestamp 8:50 in PO Fuentes’ BWC (BR 13), § 87(2)(b) stands up from her bed. She and PO Fuentes begin to walk towards the door of § 87(2)(b) bedroom. § 87(2)(b) hugs § 87(2)(b) and PO Fuentes lightly taps § 87(2)(b) arm twice. § 87(2)(b) lets go of § 87(2)(b) § 87(2)(b) yells, “record this,” repeatedly. At timestamp 9:34 PO Fuentes steps out of § 87(2)(b) bedroom in front of § 87(2)(b) reaches for § 87(2)(b) left shoulder with her left hand. PO Fuentes uses his left hand to remove § 87(2)(b) left hand from § 87(2)(b) shoulder. § 87(2)(b) tells PO Fuentes, “Don’t touch me.” PO Fuentes responds, “Don’t touch her,” and moves § 87(2)(b) in front of him. PO Fuentes tells § 87(2)(b) that § 87(2)(b) is under arrest and then, at timestamp 9:46 says, “Do me a favor. If you come closer to me, I’m going to arrest you.” § 87(2)(b) appears to be about an arm’s length from PO Fuentes, though her exact positioning is unclear due to the angle of his BWC. § 87(2)(b) says, “Okay,” repeatedly. At timestamp 10:19 PO Fuentes has walked to where § 87(2)(b) and PO Guaman-Garcia are standing near the entry of the door to the apartment. § 87(2)(b) follows and appears to be within an arm’s length of PO Fuentes, though her position is not entirely clear due to the angle of PO Fuentes’ BWC. PO Fuentes says to § 87(2)(b) “I’m telling you one more time. Back up before you get arrested.” PO Fuentes turns to face § 87(2)(b) who appears to be approximately one arm’s length away from him.

PO Fuentes stated during his CCRB interview that § 87(2)(b) could have been arrested during this incident for Obstruction of Governmental Administration (OGA) for interfering with his arrest of § 87(2)(b) by grabbing § 87(2)(b) and getting very close to him and § 87(2)(b) after he handcuffed § 87(2)(b). PO Fuentes stated that both times he told § 87(2)(b) that if she came closer to him, he

would arrest her, she was within arm's length of him. PO Fuentes further stated that the area he was in when he threatened to arrest § 87(2)(b) was cramped, and he was concerned that he could not move freely due to her presence.

PO Guaman-Garcia's statement was consistent with PO Fuentes' statement.

New York State Penal Law 195.05 (**BR 17**) states that a person is guilty of Obstructing Governmental Administration, a misdemeanor, when they intentionally prevent a public servant from performing an official function by means of physical interference.

Although § 87(2)(b) exact positioning when PO Fuentes threatened to arrest her is unclear, the investigation determined that she was very close to PO Fuentes, who was effecting an arrest and had previously given § 87(2)(b) instructions to move away from him. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (G) Discourtesy: Police Officer Jose Fuentes spoke discourteously to § 87(2)(b)

At timestamp 11:20 in PO Fuentes' BWC (**BR 13**) § 87(2)(b) says, "Y'all trying to hurt a family for no reason." PO Fuentes says, "This ain't no family." § 87(2)(b) says that people "are out here killing each other in the Bronx..." PO Fuentes says again, "This ain't no family." § 87(2)(b) finishes, "...and you care about little old me." PO Fuentes repeats, "This ain't no family." § 87(2)(b) says that § 87(2)(b) loves her, and § 87(2)(b) says that he does love her.

As discussed above, BWC captured § 87(2)(b) referring to § 87(2)(b) as his son-in-law and stating that he loves § 87(2)(b) during this incident.

PO Fuentes explained during his CCRB interview that he made this statement because in his opinion, the relationship between § 87(2)(b) and § 87(2)(b) children is not familial because he has not heard § 87(2)(b) refer to the others as his family and because § 87(2)(b) and her children do not permanently live with § 87(2)(b). Further, PO Fuentes explained that he said, "This ain't no family," because it is his opinion that § 87(2)(b) does not treat § 87(2)(b) well. PO Fuentes stated that there was no law enforcement purpose to this statement.

NYPD Patrol Guide Procedure 208-36 (**BR 24**) defines a family or household as "persons who are not related by consanguinity (blood) or affinity (marriage) and who are, or have been, in an intimate relationship regardless of whether such persons have lived together at any time."

NYPD Patrol Guide Procedure 200-02 (**BR 18**) states that NYPD officers must "render [their] services with courtesy and civility."

PO Fuentes' statement that § 87(2)(b) does not refer to § 87(2)(b) or her children as her family is false based on his own knowledge of § 87(2)(b) relationship with § 87(2)(b) and the definition of a "family" according to the NYPD Patrol Guide. Moreover, PO Fuentes' statement that "This ain't a family," served no legitimate police purpose. Rather, this remark only served to belittle § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

Civilian and Officer CCRB Histories


- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
- PO Fuentes has been a member-of-service for eight years and this is the first CCRB complaint to which he has been a subject.
- PO Guaman-Garcia has been a member-of-service for three years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of April 11, 2023, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (**BR 20**)

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad: 2

Investigator:		Investigator Madeleine Matz	04/12/2023
	Signature	Print Title & Name	Date

Squad Leader:	Samuel Ross	IM Samuel Ross	04/12/2023
	Signature	Print Title & Name	Date

Reviewer:			
	Signature	Print Title & Name	Date